BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF EP ENERGY E&P COMPANY, L.P. FOR AN ORDER POOLING ALL INTERESTS, INCLUDING THE COMPULSORY POOLING OF THE INTERESTS OF ARGO ENERGY PARTNERS, LTD., DUSTY SANDERSON, HUNT OIL COMPANY, KKREP, LLC, AND J.P. FURLONG CO., IN THE DRILLING UNIT ESTABLISHED FOR THE PRODUCTION OF OIL, GAS AND ASSOCIATED HYDROCARBONS FROM THE LOWER GREEN RIVER-WASATCH FORMATIONS COMPRISED OF ALL OF SECTION 2, TOWNSHIP 3 SOUTH, RANGE 5 WEST, U.S.M., DUCHESNE COUNTY, UTAH.	**ORDER DENYING MOTION TO RECONSIDER** Docket No. 2015-013 Cause No. 139-130

Following the issuance of the Board's May 11, 2015 Minute Entry in this Cause, Petitioner EP Energy E&P Company, L.P. (EPE) on May 18, 2015 filed a Motion for Reconsideration of Minute Entry (Motion). Respondent J.P. Furlong Co. (Furlong) on May 26, 2015 filed a Reply to Motion for Reconsideration of Minute Entry (Reply).

In its Reply, Furlong argues that the Motion is improper and not authorized by statute or rule. The Board agrees that the Motion does not fall under the Board's existing rule governing reconsideration of final orders, found at Utah Admin. Code Rule R641-110-100 to -400. The fact that a specific statute or rule provides an aggrieved party with a right to seek agency reconsideration of final order does not imply, however, that the Board is without power to

reconsider non-final orders as part of its continuing jurisdiction. Although the Board's procedural rules do not provide EPE with an opportunity as a matter of right to file a motion seeking reconsideration of a non-final order, the Board has discretionary power to consider such a motion. The Board in the present matter entertained the Motion and considered the associated briefing, but for the reasons discussed below declines to change its decision as announced in the Minute Entry.

EPE's Motion highlights an issue concerning the timing of Furlong's tender of drilling and other costs associated with the Authorization For Expenditure (AFE) for the subject well. EPE asserts such tender occurred after the filing of the Request for Agency Action in this Cause, but prior to the hearing, rather than occurring prior to both. Motion at 3-4. EPE couples this observation with an argument that the AFE alone, without an operating agreement being executed, did not legally obligate Furlong to pay the subject charges. EPE therefore concludes that at the time of the filing of its Request for Agency Action, Furlong had neither tendered the funds for, nor obligated itself to pay, the subject charges.

Furlong in its Reply makes persuasive arguments regarding the AFE at issue in this case being binding on its own, citing language to that effect in the AFE itself, and distinguishing the *Sonat* case cited by EPE on that basis. *See* Reply at 4-5.

As noted in the Minute Entry, this case of first impression presents an unusual fact pattern, and brings certain questions into sharper focus than they have been in previous cases, including:

(1) What must a non-operator do to avoid being deemed a "nonconsenting owner"? Sign an AFE? Sign an AFE and tender payment? Sign an AFE, tender payment, and sign a joint operating agreement?

(2) By what deadline must a non-operator take these actions to avoid being deemed a "nonconsenting owner"? Is the deadline dictated by the length of time that has elapsed since the offer was made, or is it tied to procedural events such as the filing of a Request for Agency Action for compulsory pooling or the date of the hearing?

(3) Can a non-operator in Utah be deemed nonconsent even if they did not receive notice of the opportunity to participate in a well until after the well was commenced and/or completed?

The Board as part of its consideration of this matter has researched the statutes and regulations of a number of other producing states as they relate to these questions. This research reveals that other states have answered these questions in a variety of ways, following no uniform approach. Many of these states have specified the answers to these questions to a greater degree than has Utah. With respect to the deadline by which a non-operator must make an election regarding whether to participate in a well, for example, some states specify a fixed period of time (such as 60 days) from the date an offer to participate is made by the operator, while other states provide for a post-hearing period in which a force-pooled party may still elect to participate. Utah's statute and rules are presently ambiguous on some of these points, leading to disputes like the present one. The Board intends in the near future to undertake rulemaking, and possibly seek statutory changes, to better define the answers to these questions.

Under the existing statute and rules, and under the particular facts of this case, the Board still finds that Furlong sufficiently consented to the drilling and operation of the subject well and agreed to bear its share of the costs and is therefore a "consenting owner" for purposes of this matter. The Board therefore reaffirms its decision as reflected in the Minute Entry. The Board takes this action by a vote of five members to one, with Chairman Ruland J Gill, Jr. voting to reconsider the prior ruling.

The Board directs EPE to prepare and file a proposed findings of fact, conclusions of law and order in conformity with this ruling.

Dated this 8th day of June, 2015.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING

Ruland J Gill, Jr., Chairman

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of June, 2015, I caused a true and correct copy of the foregoing ORDER for Docket No. 2015-013, Cause No. 139-130, to be mailed by Email or via First Class Mail with postage prepaid, to the following:

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